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No. 85-1446

In the Supreme Court of the United States

OCTOBER TERM, 1985

UNITED RETAIL WORKERS UNION LOCAL 881, ETC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD AND MAY DEPARTMENT STORES CO.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

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1. In *Amoco Production Co.*, 262 N.L.R.B. 1240 (1982), the Board ruled that an independent union that affiliates with a large international organization is not entitled to continued recognition as statutory bargaining representative unless (1) all employees in the bargaining unit, not just union members, are given an opportunity to vote on the change, and (2) there is substantial continuity of representation between the pre-and the post-affiliation representative. In the instant case the United Retail Workers Union (URW), an independent union, was the statutory bargaining representative of employees employed by the Venture Stores Division of May Department Stores Company. URW affiliated with the United Food and Commercial Workers International Union (UFCW). The Board applied

its *Amoco* rule and held that the post-affiliation organization (UFCW Local 881) was not entitled to continued recognition as the employees' statutory bargaining representative because some unit employees were not permitted to vote in the affiliation election because they were not union members (Pet. App. 33a-34a). As a result, the Board dismissed the refusal to bargain complaint against the company without determining whether there was substantial continuity between the URW and UFCW Local 881. The court below upheld the *Amoco* rule and approved its application in the instant case.

2. In *NLRB* v. *Financial Institution Employees, Local 1182*, No. 84-1493 (Feb. 26, 1986), slip op. 16 (footnote omitted), this Court held "that the Board exceeded its authority under the Act in requiring that nonunion employees be allowed to vote for affiliation before it would order the employer to bargain with the affiliated union." The Court noted, however, that it did not mean to suggest "that other Board representation procedures, such as its continuity determination, exceed its statutory authority." Slip op. 16 n.13.

3. Because the Court has recently disapproved the unit-wide vote requirement applied by the Board and approved by the court below in this case,* the Court should vacate the judgment below and remand the case to the court of appeals with instructions to remand it to the Board for further proceedings in light of *NLRB* v. *Financial Institution Employees, Local 1182, supra*. See *Bachrodt Chevrolet Co.*

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*The Court noted in *Financial Institution Employees* (slip op. 4) that the holding of the Ninth Circuit which it there affirmed was in conflict with the holding of the Seventh Circuit in this case.

v. *NLRB*, 411 U.S. 912 (1973); *FTC* v. *Sperry & Hutchinson Co.*, 405 U.S. 233, 245-250 (1972); *SEC* v. *Chenery Corp.*, 318 U.S. 80, 87-88 (1943).

Respectfully submitted.

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